

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
	)	

**COMMENTS OF SCHOLASTIC INC.**

Charles Deull, Senior Vice President and General Counsel  
Alice Fradin, Counsel  
Scholastic Inc.  
557 Broadway  
New York, NY 10012-3999  
212-343-6100

**Before the  
Federal Communications Commission  
Washington, D. C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
	)	

**COMMENTS OF SCHOLASTIC INC.**

**I. Summary**

Scholastic Inc. (“Scholastic”) submits these comments<sup>1</sup> in response to the Commission’s Notice of Proposed Rulemaking adopted on March 24, 2003 in the above-referenced docket, FCC 02-278 (the “NPRM”). In particular, in response to the Commission’s request on how it can maximize consistency with the FTC’s Telemarketing Sales Rule (“TSR”), we hereby respectfully request that: 1) the Commission adopt a consent exception to the restrictions of a national Do Not Call (“DNC”) List, as the FTC has adopted in the TSR; and 2) the Commission extend an established business relationship (“EBR”) exception to the restrictions of a national DNC List for a period of at least three years for transactions and six months for requests for information, even though the FTC has adopted only an 18 month and three month EBR exception, respectively.

**II. The Commission Should Adopt A Consent Exception To The Restrictions of a National DNC List if a DNC List is Adopted.**

In 16 CFR §310.4 (b)(1)(iii)(B)(i), the FTC has provided that:

310.4 (b)(1)It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in ...

(iii) Initiating any outbound telephone call to a person when...

(B) that person’s telephone number is on the “do-not-call” registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods and services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall

---

<sup>1</sup> Scholastic previously submitted comments in response to the Notice of Proposed Rulemaking adopted September 12, 2002 in the above referenced docket.

clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person;

In 47 CFR §64.1200 (e), this Commission has provided that:

No person or entity shall initiate any telephone solicitation to a residential telephone subscriber...

and

In Section (f)(3)(i) of the same Section, this Commission has provided that:

The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message

(i) to any person with that person's express invitation or permission,

If a person has specifically provided consent to being contacted by telephone, this consent should over-ride the restrictions that apply to being on a DNC list. To do otherwise would mean that a person who signs up on a DNC List can not choose to allow any specific entity to call them. Such result was not the intent of the TCPA in trying to minimize unwanted telephone solicitations. The FTC and this Commission have already recognized this exception and provided for it as set forth above and the Commission should also adopt such a consent exception, if a DNC list is adopted.

### **III. The Commission Should Extend An EBR Exception to The Restrictions of a National DNC List For a Period of at Least Three Years For Transactions and Six Months For Requests For Information, if a DNC List is Adopted**

In 16 CFR §310.4 (b)(1)(iii)(B)(i), the FTC has provided that:

310.4 (b)(1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in ...

(iii) Initiating any outbound telephone call to a person when...

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods and services unless the seller ...

- (ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls...

and

In 16 CFR §310.2 (n), the FTC has provided that:

310.2 (n) Established business relationship means a relationship between a seller and a consumer based on:

- (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or
- (2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

Based on the educational type of products and services that Scholastic provides, Scholastic strongly urges that the Commission adopt an EBR exception to the restrictions of a DNC List, of at least three years following the last receipt of or payment for a product or service by the customer. Parents who have purchased books from Scholastic typically are interested in purchasing age-appropriate new books from Scholastic as their child gets older. An 18 month time interval for such purchases is not enough time. Consequently, in the Section of the TSR set forth above, the FTC has not provided a long enough time period for an EBR exception involving a transaction. Scholastic respectfully requests that the Commission adopt a longer period than the FTC of at least three years for such an EBR exception, if a DNC List is adopted.

In addition, for requests for information, an EBR exception should exist for at least six months from a request for information. When parents have expressed interest in Scholastic or its products, the "reasonable amount of time" that Congress identified in the legislative history as a permissible time period in which to respond to such requests<sup>2</sup> should be at least six months. A three month time interval to respond to such information requests is not enough time. Consequently, in the Section of the TSR set forth above, the FTC has not provided a long enough period for an EBR exception involving requests for information. Scholastic requests that the Commission adopt a longer period than the FTC, of at least six months for such an EBR exception, if a DNC List is adopted.

---

<sup>2</sup> H.R. Rep. No. 102-317 (1991), LEXIS 102 H. Rpt. 317 at 17.